

February 8, 2006

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - SECY-06-0010 - WITHDRAW
PROPOSED RULEMAKING - FIRE PROTECTION PROGRAM
POST-FIRE OPERATOR MANUAL ACTIONS (RIN 3150-AH54)

The Commission has approved the staff's recommendation to withdraw the proposed rule, "Fire Protection Program Post-Fire Operator Manual Actions," and publish a notice of withdrawal in the *Federal Register*, subject to the comments and changes noted below.

The Commission continues to support the risk-informed and performance-based option for bringing closure to issues in the fire protection area.

The staff should seek to obtain information from licensees about their plans to submit exemption requests and ensure that the closure plan includes appropriate staff planning and resources to review such exemptions in a timely manner.

Enforcement discretion is appropriate for licensees that initiate corrective actions within 6 months of withdrawal of the proposed rule, especially in cases where completion of corrective actions is dependent on NRC review. The staff should ensure that the manner in which it plans to use enforcement discretion is clearly communicated internally to fire protection inspection and enforcement personnel and externally to licensees.

As part of the closure plan, the staff should expeditiously update the Standard Review Plan Section 9.5.1 "Fire Protection Program" to address acceptance guidance for post-fire operator manual actions. The staff should leverage its past experience to develop this guidance.

Changes to the *Federal Register* notice

1. Page 1, last paragraph, revise lines 2 and 3 to read ' ... ark1@nrc.gov; of the Office of ... Regulatory Commission, Washington, D.C. 20555.'
2. Page 3, paragraph 1, revise lines 3 through 5 to read ' ... safe shutdown of the nuclear power plants. The Commission is initiating an operator manual actions closure plan to ensure continuing compliance'
3. Page 3, paragraph 2, revise line 7 to read ' ... Section 9.5.1 9-5-4 , "Fire' Revise the last line to read ' ... licenses as a license conditions.'

4. Page 4, 1st full paragraph, revise lines 2 and 3 to read ‘ ... manual actions **in lieu of the specific methods provided in subparagraphs (a), (b), and/or (c) to ensure that one of the** ~~with respect to~~ redundant safe shutdown ~~trains systems~~ in the same fire area **is free of fire damage.** Therefore,’ Revise line 4 to read ‘ ... instead of **the specific methods in subparagraphs (a), (b), and/or (c)** ~~fire barriers or separation without~~’ Delete the last sentence (Licensees who are ... the rule.)
5. Page 4, after the 1st full paragraph, insert new paragraphs which read:

“The staff became aware that some licensees were using operator manual actions in lieu of the requirements in Paragraph III.G.2 in Appendix R to 10 CFR Part 50 and initiated this rulemaking as a means to bring plants into compliance.

10 CFR 50.12, “Specific Exemptions,” provides the basis for the NRC to consider exemptions from requirements 10 CFR Part 50, including the requirements in 10 CFR Part 50, Appendix R.”
6. Page 5, delete the 2 lines at the top of the page and the 1st full paragraph (The staff had become ... an exemption.)
7. Page 5, 2nd full paragraph, revise line 1 to read ‘ ... allow a licensees to’ Revise line 2 to read ‘ ... 10 CFR 50.48(c). **This approach would allow licensees to use the** ~~using~~ National Fire’ Revise line 4 to read ‘ ... Edition,” **in lieu** ~~instead of seeking~~’
8. Page 6, revise lines 3 and 4 from the top to read ‘ ... requirements ; **were included** with the criteria for feasible and reliable operator manual actions ~~were included to~~’
9. Page 7, paragraph 1, revise line 2 to read ‘ ... the current **regulations on** fire protection of **nuclear power plant** safe shutdown **capability** regulation. The’
10. Page 7, revise paragraph 2 to read ‘ ... NRC’s **evaluation of the stakeholder** ~~response to the above~~ comments **is provided in the document titled** ~~and other comments is available to the public in~~ “Response to Public Comments on the Proposed Operator Manual Actions Rule.” **This document is available electronically in ADAMS under** ~~(ADAMS~~ Accession No. ML053350235). **ADAMS may be accessed via the NRC’s Public Website at <http://www.nrc.gov/NRC/ADAMS/index.html>.**’
11. Page 7, paragraph 3, revise line 5 to read ‘ ... provided by ~~the industry~~ stakeholders during’
12. Page 7, paragraph 4, revise lines 2 and 3 to read ‘ ... withdrawal of **both** the proposed **rule on post-fire** operator manual actions ~~rule~~ and NRC’s closure plan **following withdrawal of the rule.** During this’
13. Page 8, paragraph 1, revise line 3 to read ‘ ... acceptance criteria ~~on~~ for’ Revise lines 4 and 5 to read ‘ ... outcome **would not be consistent with** ~~does not meet~~ the **primary purpose of the** rulemaking ~~primary purpose of~~ **which was to enhance** effectiveness and efficiency **by reducing** ~~to reduce~~ or **eliminating** ~~eliminate~~ exemption’ Delete the sentence in lines 5 and 6 (Issuing a new ... practice.) Revise the sentence in lines 6 and 7 to read ‘~~Based on the above,~~ **Therefore,** the NRC’

14. Page 8, paragraph 2, revise lines 1 and 2 to read ‘ ... continue to **verify compliance with enforce** its regulations through scheduled inspections ~~to ensure compliance.~~ The NRC expects ~~that non-compliance~~s findings identified’ Revise line 3 to read ‘ ... licensees; ~~will to~~ be addressed’ In line 3, insert a period after “action” and delete the remainder of the paragraph (... to bring the ... regulations.)
15. Page 8, last paragraph, revise lines 1 and 2 to read ‘ ... rulemaking ~~may would~~ require some licensees to take corrective actions **that may be different than those described in the proposed rule** ~~other than what a final rule would have allowed.~~ As such’
16. Page 9, paragraph 1, revise line 1 to read ‘ ... reiterate **the 10 CFR Part 50, Appendix R Paragraph** its III.G.2’ Revise lines 7 and 8 to read ‘ ... section 8.1.7.1), ~~respond to industry’s contention regarding backfit of operator manual actions,~~ and discuss **potential** exemption requests, compensatory measures, and’
17. Page 9, paragraph 2, revise line 2 to read ‘ ... actions and **also for** DG-1136,’ Revise line 5 to read ‘ ... update Section **9.5.1** ~~9-5-1~~,’ Revise line 8 to read ‘ ... update to **the** SRP will’
18. Page 9, paragraph 3, revise line 1 to read ‘ ... EGM 98-02 ~~(most recent revision was issued in)~~’
19. Page 10, revise line 1 from the top to read ‘ ... ~~February 2000, ADAMS Accession No. ML003710123)~~ which provides’ Revise lines 2 through 4 to read ‘ ... circuit failures. **The most recent revision of EGM 98-02 was issued in February 2000, and can be accessed in ADAMS under ADAMS Accession No. ML003710123.** This EGM, **which remains in effect, discusses** ~~was in response to an apparent widespread misunderstanding of the fire-induced circuit failure requirements on the part of licensees and remains in effect. This EGM also~~ **and** encompasses the’ Revise line 9 to read ‘ ... shutdown. **The EGM includes guidance to provide** ~~Among the enforcement conditions, discretion will be given for cases~~’ Revise line 11 to read ‘ ... nonconformance, ~~and that licensees take prompt compensatory actions, and~~ **take** corrective’
20. Page 10, 1st full paragraph, revise line 4 to read ‘ ... determine if ~~unapproved operator manual~~’ Revise line 5 to read ‘ ... taken by the **licensee** plant.’
21. Page 10, 2nd full paragraph, revise lines 2 through 4 to read ‘ ... notice. **During this six month period,** ~~The continuation of the application of the enforcement guidance in EGM 98-02 and in combination with the criteria in IP 71111.05T for six months are effective to ensure and maintain the overall plant safety by licensees through the use of~~ **will ensure the adequacy** ~~te~~ and **appropriateness** of’
22. Page 11, 1st full paragraph, delete the 1st 4 sentences (The NRC issued ... by the NRC.) Move the remainder of the paragraph to the end of the previous paragraph with the following revisions. Revise lines 10 and 11 to read ‘The ~~rationale for a six-month continuation~~ **of enforcement discretion guidance for six months** is intended to provide a reasonable amount of time for ~~those~~ licensees’ Revise line 13 to read ‘ ... corrective actions ~~s~~ could involve’
23. Page 11, last paragraph, delete the 1st 3 sentences (Some licensees could ... EGM 98-

02.) Move the remainder of the paragraph up to the end of the previous paragraph with the following revisions. Revise the last line to read '~~In any case, the staff expects that all licensees will need to~~ Licensees that have initiated'

24. Page 12, revise lines 1 and 2 from the top to read '~~... either initiate corrective actions or initiate adoption of NFPA 805 within the six-month~~ period, for noncompliances involving operator manual actions used to address fire-induced circuit failures, will receive continuation of enforcement discretion for those noncompliances provided licensees complete .~~The staff expects completion of the corrective actions~~' Revise line 3 to read '~~... timely manner.~~ The NRC expects timely completion of the corrective actions consistent with' Revise line 5 to read '~~... ML052020424) ;~~ not to exceed three years from the date of this *Federal Register Notice* and completion of the transition to NFPA 805 consistent with the licensee's NFPA 805'

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
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CFO
OCA
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR